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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **MARGARET LIM TAN**
13 **1971 Burnt Mill Road**
14 **Tustin, CA 92780**

15 **Registered Nurse License No. 586426**

16 Respondent.

Case No. **2010-550**
ACCUSATION

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about August 28, 2001, the Board of Registered Nursing issued Registered
24 Nurse License Number 586426 to Margaret Lim Tan (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on August 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Section 2811, subdivision (b) of the Code provides that each license not renewed shall expire but may within eight years be reinstated upon payment of fees and submission of proof of the applicant's qualifications as may be required by the Board.

STATUTORY PROVISIONS AND REGULATIONS

6. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

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1 8. Section 493 of the Code states:

2 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or revoke a
4 license or otherwise take disciplinary action against a person who holds a license, upon the
5 ground that the applicant or the licensee has been convicted of a crime substantially related to the
6 qualifications, functions, and duties of the licensee in question, the record of conviction of the
7 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
8 and the board may inquire into the circumstances surrounding the commission of the crime in
9 order to fix the degree of discipline or to determine if the conviction is substantially related to the
10 qualifications, functions, and duties of the licensee in question.

11 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
12 'registration.'"

13 9. Section 810 of the Code states:

14 "(a) It shall constitute unprofessional conduct and grounds for disciplinary action,
15 including suspension or revocation of a license or certificate, for a health care professional to do
16 any of the following in connection with his or her professional activities:

17 "....

18 "(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use
19 the same, or to allow it to be presented or used in support of any false or fraudulent claim..

20 "....

21 "(d) As used in this section, health care professional means any person licensed or certified
22 pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the
23 Chiropractic Initiative Act."

24 10. Section 2761 of the Code states:

25 "The board may take disciplinary action against a certified or licensed nurse or deny an
26 application for a certificate or license for any of the following:

27 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

28 "....

1 “(f) Conviction of a felony or of any offense substantially related to the qualifications,
2 functions, and duties of a registered nurse, in which event the record of the conviction shall be
3 conclusive evidence thereof.

4 “...”

5 11. Section 2765 of the Code states:

6 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
7 charge substantially related to the qualifications, functions and duties of a registered nurse is
8 deemed to be a conviction within the meaning of this article. The board may order the license or
9 certificate suspended or revoked, or may decline to issue a license or certificate, when the time
10 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
11 order granting probation is made suspending the imposition of sentence, irrespective of a
12 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person
13 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
14 of guilty, or dismissing the accusation, information or indictment.”

15 12. Title 16, California Code of Regulations, section 1444, states:

16 “A conviction or act shall be considered to be substantially related to the qualifications,
17 functions or duties of a registered nurse if to a substantial degree it evidences the present or
18 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
19 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

20 “(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
21 subdivision (d) of Penal Code Section 11160.

22 “(b) Failure to comply with any mandatory reporting requirements.

23 “(c) Theft, dishonesty, fraud, or deceit.

24 “(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
25 Penal Code.”

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1 13. Title 16, California Code of Regulations, section 1445, subdivision (b), states:

2 “....

3 “(b) When considering the suspension or revocation of a license on the grounds that a
4 registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such
5 person and his/her eligibility for a license will consider the following criteria:

6 “(1) Nature and severity of the act(s) or offense(s).

7 “(2) Total criminal record.

8 “(3) The time that has elapsed since commission of the act(s) or offense(s).

9 “(4) Whether the licensee has complied with any terms of parole, probation, restitution or
10 any other sanctions lawfully imposed against the licensee.

11 “(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
12 Penal Code.

13 “(6) Evidence, if any, of rehabilitation submitted by the licensee.”

14 COST RECOVERY

15 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licentiate found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case.

19 FIRST CAUSE FOR DISCIPLINE

20 (November 13, 2006, Conviction for Health Care Fraud)

21 15. Respondent is subject to disciplinary action under sections 490 and 2761,
22 subdivision (f) for conviction of a crime that is substantially related to the qualifications, duties,
23 and functions of a registered nurse. The circumstances are as follows:

24 a. On or about November 13, 1006, in a criminal proceeding entitled *United States of*
25 *America v. Margaret Tan*, in United States District Court for the Central District of California,
26 case number CR 06-00755, Respondent was convicted by her plea of guilty for health care fraud
27 in violation of 18 U.S.C. section 1347 as charged in Counts 1 and 2 of the Information.

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1 b. As a result of the conviction, Respondent was sentenced to three years probation on
2 each count, to be served concurrently; ordered to comply with the rules and regulations of the
3 United States Probation Office and General Order 318; to pay to the United States a special
4 assessment of \$200 and to pay restitution in the amount of \$3,434,717.14 to Medicare.

5 16. The facts that led to the convictions are as follows:

6 a. Respondent participated in a scheme to defraud a health care benefit program, namely
7 Medicare, beginning at least as early as September 1, 2001, and continuing to at least September
8 2003, in Los Angeles County. According to the Information, Respondent purported to provide in-

9 home nursing care services to Medicare patients through Provident Home Health Care Services,
10 Inc. ("Provident"), Tri-Regional Home Health Care ("Tri-Regional"), A & L Nursing Registry
11 ("A&L") and St. Vincent's Hospital (St. Vincent's"). Provident and Tri-Regional were Medicare
12 providers. Medicare provided reimbursement for health care services to the elderly, certain
13 disabled people, and persons with permanent kidney failure.

14 b. Respondent prepared and signed admission packets to enroll Medicare beneficiaries
15 for home health services. Respondent had the beneficiaries pre-sign blank admission forms for
16 home health services, a blank Outcome and Assessment Information Sheet ("OASIS") form, and
17 "Daily Route Sheets." Respondent falsified the OASIS forms to make it appear as though: (a)
18 she conducted a complete evaluation of beneficiaries, when in fact she had not; (b) the
19 beneficiaries were homebound, when in fact they were not, and (c) the beneficiaries' medical
20 condition and lacking of willing caregivers made home health services medically necessary, when
21 in fact they were not. Additionally, Respondent enrolled the beneficiaries with the home health
22 agencies whether the beneficiaries met the criteria for Medicare reimbursement or not, then she
23 submitted falsified OASIS forms, Daily Route Sheets and skilled nursing notes to Provident and
24 Tri-Regional, which then billed Medicare based on the documentation submitted by Respondent.
25 Respondent also purported to visit beneficiaries on a schedule set forth in their plans of care but
26 did not in fact do so. As a result of Respondent's conduct, the home health care agencies
27 submitted false claims for payment to Medicare. Medicare then paid the claims based on the false
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1 information and representations regarding the beneficiaries' medical condition and the number of
2 visits purportedly made. The agencies and the nursing registry then paid Respondent.

3 c. Respondent caused the home health care agencies to submit to Medicare and caused
4 Medicare to pay false and fraudulent claims for approximately 982 episodes of home health
5 services to approximately 612 beneficiaries between September 1, 2001, and September 30, 2003.

6 d. Specifically, the Information charges that on July 17, 2002, and February 13, 2003,
7 Respondent knowingly and willfully caused to be submitted to Medicare the following false and
8 fraudulent claims: Count 1, wherein Medicare claim number 20219902956002 submitted by

9 Provident for alleged registered nurse services provided to a patient on July 17, 2002, was paid in
10 the amount of \$2,613.33 and Count 2, wherein Medicare claim number 20304421181304
11 submitted by Tri-Regional for alleged registered nurse services provided to a patient on
12 February 13, 2003, was paid in the amount of \$3,212.53.

13 SECOND CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct for Health Care Fraudulent Claims)

15 17. Respondent is subject to disciplinary action for unprofessional conduct under
16 section 2761, subdivision (a) in that Respondent committed health care fraud in violation of
17 section 810, subdivision (a)(2) in that Respondent knowingly prepared, made or subscribed
18 writings, with the intent to present or use them, or to allow them to be presented or used in
19 support of any false or fraudulent claims as is more fully set forth in paragraphs 15 and 16, above,
20 which are incorporated by reference.

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking or suspending Registered Nurse License Number 586426, issued to
25 Margaret Lim Tan;

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1 2. Ordering Margaret Lim Tan to pay the Board of Registered Nursing the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

5
6 DATED: 4/26/10 *Louise R. Bailey*
7 LOUISE R. BAILEY, M.ED., RN
8 Interim Executive Officer
 Board of Registered Nursing
 Department of Consumer Affairs
 State of California
9 Complainant

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